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Study on the relationship between indigenous peoples and the Pacific Ocean

Note by the secretariat

Summary

At its fourteenth session, the Permanent Forum appointed Valmaine Toki, a member of the Permanent Forum, to conduct a study on the relationship between indigenous peoples and the Pacific Ocean, taking into account issues of governance, the effects of climate change, deep sea mining, resources and sustainable development (see E/2015/43, para. 44). The outcome of the study and the recommendations related thereto are set out in the report, which is hereby submitted to the Permanent Forum at its fifteenth session.

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Study on the relationship between indigenous peoples and the Pacific Ocean

I. Introduction

1. Oceans cover nearly 75 per cent of the Earth's surface, contain more than 97 per cent of the Earth's water and represent 99 per cent of the living space on the planet by volume. Over 3 billion people depend on marine and coastal biodiversity for their livelihoods. Oceans absorb about 30 per cent of the carbon dioxide produced by humans, thereby buffering the impacts of global warming. As much as 40 per cent of the world's oceans are heavily affected by human activities, including pollution, depleted fisheries and loss of coastal habitats. It is no surprise that oceans serve as a critical component of the world's ecosystem. Prudent management of the world's oceans is a key feature for a sustainable future.

2. World Oceans Day, which is commemorated on 8 June each year, was designated by the General Assembly in order to celebrate and take action on oceans. The United Nations has urged communities to ensure that the oceans remain clean and healthy and to recognize the importance of ocean ecosystems, their capacity to withstand damage caused by human activities and the role they play for the future of sustainable development. In his message on World Oceans Day 2015, the Secretary-General stated the following:[1]

> Oceans are an essential component of the Earth's ecosystem, and healthy oceans are critical to sustaining a healthy planet. Our oceans regulate the climate and process nutrients through natural cycles while providing a wide range of services, including natural resources, food and jobs that benefit billions of people. Given how critical oceans are to the health of our planet and the prosperity of people, they are an essential element in our emerging vision for sustainable development, including the new set of sustainable development goals now being prepared to guide the global fight against poverty for the next 15 years.
>
> Climate change poses a great challenge for the health and productivity of the oceans. The science is clear: humans have caused changes to the climate system that are linked to the warming of oceans. Sea levels are rising, with devastating effects on vulnerable communities, especially people living in small island developing States.
>
> World Oceans Day is a chance to strengthen our resolve to appreciate, protect and restore our oceans and their resources. The oceans are vast — but their capacity to withstand human damage is limited. In this potentially pivotal year, we must commit to using the gifts of the oceans peacefully, equitably and sustainably for generations to come.

3. Echoing that message, the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) stated that a sustainable planet could not exist without a healthy ocean.[2] On 25 September 2015, the General Assembly adopted resolution 70/1, entitled "Transforming our world: the 2030 Agenda for

[1] Available from www.un.org/sg/statements/index.asp?nid=8708.
[2] See http://unesdoc.unesco.org/images/0023/002331/233141E.pdf.

Sustainable Development", in which the oceans and seas were recognized as an important resource of sustainable development. The Assembly recognized that social and economic development depended on the sustainable management of the planet's natural resources, and it therefore determined to conserve and sustainably use oceans and seas, freshwater resources, as well as forests, mountains and drylands and to protect biodiversity, ecosystems and wildlife.

4. Indigenous peoples rely on the oceans, the seabed and the associated environments for their food, health, economic activities and cultural practices. All activities that have a negative impact on the oceans will have disastrous effects on the health, lives, economies and cultures of indigenous peoples, which, in turn, will only exacerbate their already poor living conditions and life expectancy for future generations. On 9 December 2013, during the sixty-eighth session of the General Assembly, Margo Deiye of Nauru, in association with the Pacific Islands Forum, stated that island nations had a unique dependence on oceans and that the sustainable use of marine resources was a key tool for eradicating poverty for present and future generations.[3] The importance of the oceans to the indigenous peoples of the Pacific cannot be overstated, yet their ability to meaningfully participate in decision-making on matters that will have a direct impact on oceans and on their environments is limited.

5. Various issues, including deep sea mining and the ability to maintain and develop resources sustainably, make it urgent for indigenous peoples to engage in the governance of oceans and the seabed. The urgent need to address the impacts of climate change on the indigenous peoples of the Pacific drives this requirement of governance.

6. The key provisions of the United Nations Declaration on the Rights of Indigenous Peoples that recognize the rights of indigenous peoples to the ocean and its environs are addressed in section II of the present report. An examination of the United Nations processes that govern the oceans is set out in section III, and an overview of the Pacific region is provided in section IV, followed by case studies of selected countries in section V, in order to highlight the importance of governance, the deleterious impacts of climate change and deep sea mining on the ocean and the importance of sustainable development for indigenous peoples living in the Pacific region. Sections VI and VII provide conclusions and recommendations to highlight the importance of upholding the right of indigenous peoples to meaningful participation in the governance of the oceans.

II. United Nations Declaration on the Rights of Indigenous Peoples

7. For indigenous peoples, the scope of their rights to their lands, territories and oceans is not limited to the orthodox perception of a sea boundary but extends to the seabed. For them, there is no distinction between lands above and lands below their waters. Governance of the oceans and its environs is pivotal to the cultures, health and welfare of all indigenous peoples, in particular those of the Pacific region.

[3] See meetings coverage of sixty-second and sixty-third meetings, 9 December 2013, available from http://www.un.org/press/en/2013/ga11466.doc.htm.

8. This relationship is emphasized in the Declaration. Article 3 provides that indigenous peoples have the right of self-determination and that, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. Together, articles 3, 25, 26 and 32 of the Declaration not only recognize that indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas but also provide clear grounds for the right of indigenous peoples in the Pacific region to govern the ocean. Therefore, any activity that takes place within indigenous peoples' traditionally owned or otherwise occupied and used lands, such as seabed mining, requires their free, prior and informed consent (articles 19 and 32). In addition, States are required to recognize and protect these lands and resources, provide effective mechanisms for redress and take steps to mitigate any adverse impacts (article 32).

9. Furthermore, indigenous peoples have the right to protect and conserve their environment, including fish stocks, seabed and mineral deposits, and States must take steps to ensure this right (article 29). The Declaration explicitly states that any legislation or administrative measures, such as the granting of seabed mining licences, require the free, prior and informed consent of indigenous peoples (article 19).

III. United Nations system

10. The United Nations system is complex and multilayered. Intrinsic to examining the United Nations system as it relates to oceans, a discussion of UN-Oceans and the International Seabed Authority is outlined below. The discussion provides the context for the rights of indigenous peoples with regard to oceans, and in particular to mitigating the impacts of climate change and seabed mining.

11. In 1992, the United Nations Conference on Environment and Development adopted Agenda 21, which was aimed at preparing the world for the challenges of the next century. The protection of the oceans and the seas and their environs is articulated in chapter 17. In 1993, in order to adopt a coordinated and comprehensive response to support chapter 17, United Nations agencies involved with oceans and coastal issues formed the Subcommittee on Oceans and Coastal Areas of the Administrative Committee on Coordination. Following consultations among programmes and agencies of the United Nations system involved in the coordination of oceans and coasts, a new inter-agency coordinating mechanism was developed. In 2003, the creation of an ocean and coastal areas network was approved, which would subsequently be named "UN-Oceans".

12. UN-Oceans is an inter-agency mechanism that seeks to enhance the coordination, coherence and effectiveness of competent organizations of the United Nations system, such as the International Seabed Authority and the secretariat of the Convention on Biological Diversity, in conformity with the United Nations Convention on the Law of the Sea. UN-Oceans has been meeting on an annual basis since 2005 and is mandated, inter alia, to strengthen and promote the coordination and coherence of United Nations system activities related to oceans and coastal areas.[4]

[4] See General Assembly resolution 68/70, annex, for the terms of reference for UN-Oceans.

13. In 2013, the General Assembly adopted resolution 68/70, by which it recognized the work undertaken by UN-Oceans and approved the revised terms of reference, with a revised mandate. The terms of reference will be reviewed by the Assembly at its seventy-second session, in the light of the work of UN-Oceans.

14. The International Seabed Authority was established under the 1982 United Nations Convention on the Law of the Sea. Through the Authority, States parties to the Convention organize and control activities outside of the territorial waters of individual countries, in order to administer the resources of the "area",[5] including the granting of exploration licences. States and State-sponsored companies proposing to engage in exploration or exploitation of area resources must obtain approval from the Authority. It should be noted that, in this process, there is no provision for indigenous peoples' voices to be heard in decision-making and monitoring.

15. As of 1 June 2015, 22 contracts for exploration in the "area" had entered into force (14 for exploration for polymetallic nodules, 5 for exploration for polymetallic sulphides, and 3 for exploration for cobalt-rich ferromanganese crusts) (see ISBA/21/LTC/8/Rev.1, para. 2). Since July 2014, five new contracts were signed, including a contract for exploration for cobalt-rich ferromanganese crusts with the Ministry of Natural Resources and Environment of the Russian Federation, in an area on the Magellan Mountains in the Pacific Ocean, signed on 10 March 2015. In July 2015, the Authority signed an exploration contract for polymetallic nodules with UK Seabed Resources Ltd. in an area in the Clarion-Clipperton fracture zone and an exploration permit covering 72,745 square kilometres (28,087 square miles) in the Pacific with China Minmetals Corp., sponsored by the Government of China, bringing the total number of permits issued to China to four. China has secured the most permits from the Authority.[6] These contracts enable Governments and private companies to operate in international waters.

16. Although seabed mining is not new, recent technological developments, together with global demand, have resulted in what is likened to a gold rush.[7] Deep sea mining is governed by part XI of the Convention and is regulated by a raft of obligations to protect and preserve the marine environment.

17. Researchers have recommended that, as part of its strategic plans to protect deep-seabed habitats and manage mining impacts, the International Seabed Authority should adopt a precautionary approach before granting additional large claim areas for deep seabed mining.[8] A precautionary approach is important to ensure sustainability and is synonymous with indigenous world views, according to many of which, the environment is like a person. Living sustainably with the environment is a tenet that underpins the cultures of indigenous peoples.

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[5] Article 1 of the United Nations Convention on the Law of the Sea defines "area" as the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.

[6] See Associated Press, "UN body issues exploration contracts as era of deep sea mining nears", *Japan Times*, 26 July 2015. Available from www.japantimes.co.jp/news/2015/07/26/world/science-health-world/u-n-body-issues-exploration-contracts-era-deep-seabed-mining-nears/#.Vszl5-ZQXpc.

[7] David Shukman, "Deep sea mining licenses issued", *BBC News*, 23 July 2014. Available from www.bbc.com/news/science-environment-28442640.

[8] L. M. Wedding and others, "Managing mining of the deep seabed", *Science*, vol. 349, No. 6244 (July 2015), pp. 144-145. Available from http://science.sciencemag.org/content/349/6244/144.full.

IV. Pacific Ocean

18. The Pacific Ocean is the largest of the Earth's oceans. It extends from the Arctic Ocean in the north to the Antarctic Ocean in the south, and is bounded by Asia and Australia in the west, and the Americas in the east. With an area of 165.2 million km^2 (63.8 million square miles), the Pacific Ocean covers approximately one third of the Earth's surface and about 46 per cent of the Earth's water surface. It is larger than Earth's entire landmass of some 150 million km^2 (58 million square miles).

19. In 2008, there were an estimated 9.5 million indigenous people in the South Pacific.[9] For the indigenous peoples of the Pacific, the Pacific Ocean is pivotal to their culture and well-being. Not only do they rely on the ocean for sustenance, but their relationship with the ocean is governed in accordance with their culture and, prior to colonization, they managed this resource sustainably. This intrinsic relationship is recognized and articulated in the Declaration on the Rights of Indigenous Peoples.

20. Environmental threats, including climate change and pollution, adversely affect those rights. The detrimental effects of climate change threaten not only the existence of the indigenous peoples of the Pacific, but also the continuation of their cultures. Rising sea levels result in severely reduced food production and reduction in potable drinking water. The flow-on effects include relocation of families and attendant alienation from their cultures and wider family structures. That threat aggravates the already vulnerable position of small island Pacific States. Overfishing and the destruction and exploitation of natural resources through deep sea mining further exacerbate those threats.

21. Goal 14 of the post-2015 development agenda is to "conserve and sustainably use the oceans, seas and marine resources for sustainable development". In its resolution 70/1 adopting the agenda, the General Assembly highlighted the climate change challenges faced by small Pacific island States:

> Climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve sustainable development. Increases in global temperature, sea level rise, ocean acidification and other climate change impacts are seriously affecting coastal areas and low-lying coastal countries, including many least developed countries and small island developing States. The survival of many societies, and of the biological support systems of the planet, is at risk (para. 14).

22. As indigenous peoples of the Pacific are vulnerable to climate change, they must be empowered. It is essential that effective measures are taken to remove obstacles and strengthen support to meet the special needs of the indigenous peoples of the Pacific who are facing complex humanitarian emergencies as a result of climate change.

23. Indigenous peoples have an intrinsic relationship with their environment, which is underpinned by reciprocity and interdependence. Many Pacific island States have implemented policy and legislative measures to protect and maintain the traditional knowledge of their indigenous peoples by including this relationship in

[9] Eric L. Kwa, "Climate change and indigenous people in the South Pacific", paper presented at the IUCN Academy of Environmental Law Conference on "Climate law in developing countries post 2012: North and South perspectives", Ottawa, Canada, 26-28 September 2008.

their respective Constitutions. For instance, one of the key goals of the Environmental Management and Conservation Act (2002) of Vanuatu is the protection, promotion and strengthening of fundamental traditional values and principles pertinent to biological conservation and sustainable use.[10] A similar legislative arrangement is provided for in the Conservation Areas Act (1978) and the Fauna (Protection and Control) Act (1966) of Papua New Guinea.[11] Notwithstanding the inclusion of provisions relating to traditional knowledge in different pieces of legislation across the Pacific islands, legislation, by its very nature, is not flexible enough to capture and cater for the adverse effects of climate change, including its associated problems such as climate change refugees, rising water levels and access to water, and protection of traditional lands in the context of deep sea mining.

V. Case studies

A. Kiribati: climate change

24. Kiribati gained independence from the United Kingdom of Great Britain and Northern Ireland in 1979. Kiribati comprises 33 atolls and reef islands covering a total land area of 800 square kilometres dispersed over 3.5 million square kilometres, with a population of about 100,000. Kiribati is vulnerable to rising sea levels resulting from the impact of climate change.

25. The World Bank forecasts that the capital on Tarawa Atoll, where 50 per cent of the population live, will, as a result of climate change, experience increased coastal flooding unless significant climate adaption is undertaken. If no effective action is taken, relocation will be the only alternative. Abaiang villages have already been relocated owing to severe coastal erosion and saltwater intrusion. The creation of a climate change displacement coordination facility would enable organized migration and planned relocation, as well as compensation to people fleeing rising sea levels, extreme weather and ruined agriculture.[12] There has been resistance from some countries, such as Australia and New Zealand, to relocating people in the Pacific region who are affected by climate change. In September 2015, the refugee application of Ioane Teitiota, a Kiribati national seeking asylum in New Zealand on the grounds of climate change, was refused.[13]

26. In addressing the General Assembly on 9 December 2013, the Permanent Representative of Kiribati to the United Nations, Makurita Baaro, stated that a major challenge for Kiribati was to address the adverse effects of climate change on food security, the water supply and the ability to sustain life. She noted that proper use and management of oceans was the only hope for sustainable development.[14] Kiribati has implemented an adaptation programme aimed at reducing its vulnerability

[10] Ibid.

[11] Ibid.

[12] Oliver Milman, "UN drops plan to help move climate-change affected people", *The Guardian* (6 October 2015). Available from http://www.theguardian.com/environment/2015/oct/07/un-drops-plan-to-create-group-to-relocate-climate-change-affected-people.

[13] Kim Griggs, "Kiribati 'climate refugee' Ioane Teitiota faces deportation after New Zealand court ruling", *ABC News* (22 September 2015). Available from www.abc.net.au/news/2015-09-21/kiribati-climate-refugee-faces-deportation-from-new-zealand/6793144.

[14] See United Nations press release GA/11466 of 9 December 2013. Available from www.un.org/press/en/2013/ga11466.doc.htm.

to climate change by improving water use, protecting against coastal erosion and strengthening community capacity to manage the effects of climate change. Nonetheless, those are reactive measures to the global problem of climate change. If climate change had been effectively managed or seriously considered earlier, such preventive measures would not be so pressing today.

B. Tuvalu: climate change

27. Tuvalu gained independence from the United Kingdom in 1978. Tuvalu comprises three reef islands and six atolls, spread over a total land area of 26 square kilometres, with a population of approximately 10,850 people. Tuvalu is low lying, with the highest point being only 4.6 metres above sea level and the average height being less than 2 metres above sea level. With an estimated sea level rise of 20 to 40 centimetres annually, it is forecast that, in the next 100 years, Tuvalu will be uninhabitable. However, the relocation of Tuvaluans to avoid the impacts associated with a rising sea level is not an option.

28. In 2013, Prime Minister Enele Sopoaga noted that relocating Tuvaluans to avoid the impact of sea level rise should never be an option, because it was self-defeating in itself. For Tuvalu, he felt that there was a real need to mobilize public opinion in the Pacific, as well as in the rest of world, to really urge their lawmakers to have some sort of moral obligation and things like that to do the right thing.[15] On 29 September 2013, Deputy Prime Minister Vete Palakua Sakaio concluded his speech during the general debate of the sixty-eighth session of the General Assembly with an appeal to the world: "Please save Tuvalu against climate change. Save Tuvalu in order to save yourself, the world".[16]

29. Although Tuvalu has a national adaptation programme of action in response to climate change, a global action plan is warranted, whereby leaders seriously consider reducing and agreeing to lowering carbon emissions correlated to increases in the rate of climate change due to global warming.

30. As two of the world's nations that are most vulnerable to the negative impacts of climate change, Kiribati and Tuvalu have been active participants in international diplomatic efforts to address climate change, most importantly within the United Nations Framework Convention on Climate Change. Kiribati and Tuvalu are also members of the Alliance of Small Island States, an intergovernmental organization of small island and low-lying coastal countries that aims to consolidate the voices of small island developing States to address global warming.

31. Although the issue of climate change was high on the agenda of the 46th Pacific Islands Forum Leaders meeting, held in Port Moresby in September 2015, subsequent discussions and the watering down of the issue resulted in the Pacific Islands group failing to reach a strong and unified position at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Paris in November and December 2015.

[15] See Radio New Zealand International, "Relocation for climate change victims is no answer, says Tuvalu PM", 3 September 2013. Available from www.radionz.co.nz/international/pacific-news/220781/relocation-for-climate-change-victims-is-no-answer,-says-tuvalu-pm.

[16] Statement available from http://gadebate.un.org/sites/default/files/gastatements/68/TV_en.pdf.

C. Papua New Guinea: deep sea mining

32. Papua New Guinea is richly endowed with natural resources, including minerals, renewable resources, forests and marine life. This mineral wealth extends to the seabed. Currently, Papua New Guinea, in conjunction with other States, is engaged in oil and gas extraction projects operated by ExxonMobil. Many more exploration projects have been proposed in Papua New Guinea. While mining is lauded as economically favourable, the indigenous people of Papua New Guinea have not seen any tangible benefits from the decades of mining on land but suffer the direct consequences of environmental disasters, such as the adverse effects of river tailings from the Ramu nickel mine.

33. Human rights violations by transnational companies, licence holders in joint ventures with the Government, further compounds these concerns, particularly when power imbalances arise and no effective remedies are provided. It has been suggested that, in such situations:

> An effective and rights-promoting remedy mechanism should strive to address inherent structural power imbalances. Multinational corporations can often wield enormous power over states, local communities, and individuals affected by their operations. To mitigate the risk, ... strict safeguards must be put in place to address and recalibrate the balance of bargaining power between corporations and rights-holders.[17]

In the present case, indigenous peoples are the rights holders. It is not surprising that local communities in Papua New Guinea and the Pacific, in general, are protesting against deep sea mining and have presented a petition with over 24,000 signatures to the Government to halt experimental seabed mining.[18]

34. Seabed mining is the process of extracting mineral deposits from the ocean floor. Traditionally, seabed mining was conducted using either hydraulic suction pumps or bucket dredging systems.[19] However, despite advances in seabed mining technology, scientific research and knowledge concerning the unique biophysical character of the deep sea environment and the impact of deep sea mining is very limited. As such, there is relatively little information concerning the potential risk of environmental damage associated with proposed seabed mining activities.[20]

35. The extent of disturbances and impact on local seabed ecology is dependent on many factors, including the size of the mining area, the extraction and deposition method used, the type of sediment on the seabed and how exposed the area is to

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[17] See Columbia Law School Human Rights Clinic and Harvard Law School International Human Rights Clinic, *Righting Wrongs? Barrick Gold's Remedy Mechanism for Sexual Violence in Papua New Guinea: Key Concerns and Lessons Learned* (November 2015), p. 3. Available from http://hrp.law.harvard.edu/wp-content/uploads/2015/11/FINALBARRICK.pdf.

[18] Tina Hunter and Madeline Taylor, "Deep sea bed mining in the South Pacific", background paper prepared for the Centre for International Minerals and Energy Law (n.d.). available from www.law.uq.edu.au/documents/cimel/Deep-Sea-Bed-Mining-in-the-South-Pacific.pdf.

[19] See New Zealand, Petroleum and Minerals, *Seabed mining factsheet*, last updated 7 October 2014. Available from www.nzpam.govt.nz/cms/iwi-communities/government-role/doc-library/seabed-mining-factsheet.pdf.

[20] See Robert Makgill and Ana P. Linhares, "Deep seabed mining regulation in the Pacific", *LawTalk*, No. 869 (16 July 2015). Available from www.lawsociety.org.nz/lawtalk/lawtalk-archives/lawtalk-869/deep-seabed-mining-regulation-in-the-pacific.

natural disturbance from currents and waves. Some of the devastating environmental impacts of seabed mining include disturbance to sea habitats, plumes of sediment when tailings are discharged, adverse effects on marine mammals and fish stocks, such as noise and vibrations, wave formation and erosion[19] and the effects on existing interests, such as indigenous peoples' rights.

36. There are also significant unanswered questions regarding the sociocultural and environmental impacts of seabed mining and the underlying science. Industry and governments have abandoned the precautionary approach and any pretence of balancing profits with conservation, human rights, scientific knowledge and sustainable development. Experimental mining is fast-tracked without the benefit of adequate scientific debates or any prior public dialogue and meaningful community participation, the lack of which is compounded when the activity takes place in indigenous territories.

D. New Zealand or *Aotearoa*: living sustainably through *tikanga* Maori

37. Maori, the indigenous peoples of New Zealand, like other indigenous peoples, have a spiritual connection to the oceans and their environs. Maori perceptions of the environment and natural resources, such as the fish in the sea and the climate, are sourced from Maori cosmology, which governs Maori attitudes towards their environment. In their view, animate and inanimate objects are not only interrelated, but considered related. This concept of relatedness (*whanaungatanga*) extends the obligation to non-human relations. In accordance with Maori world view, all things and all people are related and should treat each other with respect. Consequently, Maori believe that if they look after *Papatuanuku* or Earth Mother, she will in turn look after Maori, thereby adhering to the concept of *kaitiaki* or guardianship. The aim for Maori culture or *tikanga* Maori is achieving balance — with the environment and with the community.

38. The concept of *tikanga* Maori are recognized in various pieces of domestic legislation. For instance, when applying for permission to carry out an activity in the environment, the concept of *kaitiakitanga* or the exercise of guardianship has to be satisfied before the activity is approved.[21] In addition, the concept of *rahui* or *tapu*, a tool placing a temporary ban or restriction of access to an area or resource, for example, fish, to allow regeneration, is provided for as a Fisheries Regulation.[22] Furthermore, *taiapure*[23] is an area that has been traditionally managed and is analogous to a marine reserve. *Taiapure* is also provided for in the Fisheries Regulation. It was therefore disappointing that, when the Government of New Zealand announced to the General Assembly in September 2015 that the waters around the Kermadec Islands to the north of New Zealand would become one of the largest ocean sanctuaries in the world, it did not acknowledge the existence of *taiapure*.[24]

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[21] New Zealand, Resource Management Act (1991), sect. 7.

[22] See New Zealand, Fisheries Act (1996), sects. 186A and B; and Fisheries (Kaimoana Customary Fishing) Regulations (1998).

[23] New Zealand, Fisheries Act (1996), sects. 174-185.

[24] John Key, "PM announces Kermadec Ocean sanctuary", press release of 29 September 2015 on the official website of the Government of New Zealand. Available from www.beehive.govt.nz/release/pm-announces-kermadec-ocean-sanctuary.

39. Although the inclusion of Maori concepts is to be commended, it is also open to criticism. The incorporation of Maori concepts into the legislation acknowledges and promotes Maori cultural identity within legislative frameworks;[25] however, there is no nexus between the passage of domestic legislation and *tikanga* Maori. The doctrine of parliamentary sovereignty does not require Parliament to consider *tikanga* Maori before passing legislation. Furthermore, when *tikanga* is taken into account in legislation, often only one aspect has to be satisfied or considered by the decision makers. Considering only one aspect of *tikanga* in isolation, without a context, runs the risk of misinterpretation. Similarly, it is the decision makers who determine whether or not the definition of *tikanga* is satisfied.

40. It has been suggested that greater recognition and incorporation of indigenous cultural principles in the policies and operations of United Nations system organizations, such as the International Seabed Authority and UN-Oceans, would enable achievement not only of sustainability but also fulfilment of the rights articulated in the United Nations Declaration on the Rights of Indigenous Peoples and perhaps be nimble in responding to the environmental challenges posed by climate change. However, as indigenous peoples do not have a strong standing within the United Nations system, there is no direct participation by indigenous peoples in either the International Seabed Authority or UN-Oceans, despite their undeniable intrinsic rights to the oceans, the seabed and their environs. As such, indigenous peoples must rely, instead, on respective States and governments, whose officials are invariably not indigenous.[26]

VI. Conclusion

41. Pacific island States are the most vulnerable to the impacts of climate change. Traditionally, the indigenous peoples of the Pacific have managed their environment, including the oceans, seabed and environs, sustainably so as to benefit all peoples and future generations.

42. The intrinsic relationship that indigenous peoples have with the oceans, seabed and environs are clearly articulated in the United Nations Declaration on the Rights of Indigenous Peoples, including a right of governance. For any activity, such as seabed mining, that takes place within their traditionally owned or otherwise occupied and used lands, their free, prior and informed consent is required. Correspondingly, the onus is on States to recognize and protect the lands and resources of indigenous peoples, provide effective mechanisms for redress and take steps to mitigate any adverse effects on the lives, health, cultures and economies of indigenous peoples. Indigenous peoples have inherent rights to protect and conserve their environments, including the oceans and seabed, and States are required to take steps to ensure these rights.

43. The current actions and inactions and contracts agreed by the International Seabed Authority and UN-Oceans are evidence that recognition and consideration of indigenous peoples' rights and their inclusion in decision-making is not occurring.

[25] Arnu Turvey, "Te ao Māori in a 'sympathetic' legal regime: the use of Māori concepts in legislation", *Victoria University of Wellington Law Review*, vol. 40, No. 2 (October 2009).

[26] For example, the President of the International Seabed Authority, Peter Thompson, was born in Fiji, but is a non-indigenous Fijian.

In the light of the underlying philosophy of sustainability by which indigenous peoples live, it is imperative that their rights be embraced rather than sidelined.[27]

VII. Recommendations

44. Taking into account the actions or inactions taken by United Nations system organizations and agencies that have an impact on indigenous peoples, various mechanisms should be developed to facilitate indigenous peoples' full participation in decision-making on policy development in respect of oceans. Where an activity has a direct impact on indigenous peoples, their free, prior and informed consent must be secured.

45. It is therefore recommended that organizations and agencies such as UN-Oceans, the International Seabed Authority and the United Nations Educational Scientific and Cultural Organization provide, at a minimum, like the World Bank, a place for members of the Permanent Forum as well as independent indigenous experts in the decision-making processes so as to allow indigenous peoples to meaningfully contribute to decisions that affect their lives and environment.[28]

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[27] See United Nations Declaration on the Rights of Indigenous Peoples, art. 31.

[28] Of note is the United Nations Development Programme initiative for indigenous voices to be heard at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Paris in December 2015. Available from www.undp.org/content/undp/en/home/presscenter/pressreleases/2015/11/11/indigenous-people-take-steps-to-have-a-voice-in-cop21.html.